

App. No. 10/007, 364
Office Action Dated July 19, 2005

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REMARKS

Reconsideration is requested in view of the above amendments and the following remarks. Claims 16, 20, 21, and 23 are amended. The amendments are generally supported by the original disclosure. New claims 34 and 35 are added. The new claims are supported by the original disclosure, for example, Figures 4A and 4B and page 8, lines 16-22. Claims 10-23, 25 and 29-35 are pending.

I. Information Disclosure Statements

Applicants note that in application serial no. 10/105,984, which was cited by Applicants in the Information Disclosure Statement filed on July 28, 2004, Examiner Ho Provisionally rejected the claims of that application under the doctrine of obviousness-type double patenting as being unpatentable over claims 10-25 of this application (10/007,364).

In addition, Applicants filed Information Disclosure Statements on February 4, 2005 (citing a single reference) and August 2, 2005 (citing 2 references). Applicants request consideration of these Information Disclosure Statements and return of Form 1449 with the references initialed as being considered.

II. Indefiniteness Rejection

Claims 21 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection. Claims 21 and 23 have been amended to correct the indefiniteness issues.

Reconsideration and withdrawal of the rejection are respectfully requested.

III. Prior Art Rejections

Claims 20, 21, and 23 were rejected under 35 USC 102(b) as being anticipated by Shimuzu et al. (US 4,841,949). Applicant respectfully traverses this rejection. Shimuzu et al. do not disclose a closing element carried by the shaft configured to engage the left atrial appendage in a manner to close the left atrial appendage, as required by claim 20.

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The structure 42B is a treating element that is used for general medical treatment. The treating element 42B is not specifically configured to engage the left atrial appendage in a manner to close it.

In addition, Shimuzu et al. do not disclose a shaft that is curved over its length from the distal end to the proximal end. Shimuzu et al. do not disclose that the bending portion 12 is curved in either the specification or drawings. Therefore, the portion 12 is not curved over its length from the distal end to the proximal end.

For at least these reasons, claim 20 is patentable over Shimuzu et al. Claims 21, 23, 34 and 35 depend from claim 20 and are patentable along with claim 20 and need not be separately distinguished at this time. Applicants do not concede the propriety of the rejections to claims 21 and 23.

Claims 16-18 were rejected under 35 USC 103(a) as being unpatentable over Shimuzu et al. Applicant traverses this rejection. Shimizu et al. do not disclose an exit port spaced inwardly from the distal end by a distance in the range from 0.5 cm to 5 cm. Claim 16 is directed to a device for closing a left atrial appendage of a heart, where the distal end is configured to lie within an atrioventricular valve groove of the heart. Because the distal end lies within the groove, the exit port needs to be spaced a sufficient distance away from the distal end in order for the exit port to be adjacent to the left atrial appendage.

Shimuzu et al. do not disclose the distance between their distal end and their port. Nor does Shimuzu et al. provide motivation to use a distance between its distal end and an exit port as claimed. Shimizu discloses an endoscope for general medical treatment. There is no disclosure that the endoscope is useable to close a left atrial appendage, and there is no disclosure that the distal end is configured to lie within an atrioventricular valve groove of the heart. Therefore, there would be no teaching or suggestion to a person having ordinary skill in the art to configure the endoscope such that an exit port of a lumen is spaced inwardly from the distal end by a distance in the range from 0.5 cm to 5 cm, so that the exit port is spaced sufficiently away from the distal end when the distal end is inserted within an atrioventricular valve groove of the heart in order for the exit port to be adjacent to the left atrial appendage.

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For at least these reasons, claim 16 is patentable over Shimuzu et al. Claims 17 and 18 depend from claim 16 and are patentable along with claim 16 and need not be separately distinguished at this time. Applicants do not concede the propriety of the rejections to claims 16-18.

Claims 32 and 33 were rejected under 103(a) as being unpatentable over Shimuzu et al., in view of Whayne et al. (US 5,865,791). Applicant traverses this rejection. Claims 32 and 33 depend from claim 16 and are patentable along with claim 16 and need not be separately distinguished at this time. Applicants do not concede the propriety of the rejections to claims 32 and 33.

Claim 19 is objected to as being dependent upon a rejected base claim. It is patentable along with claim 16 and need not be separately distinguished at this time.

Applicants gratefully acknowledge that claims 10-15, 22, and 25-31 are allowable.

In view of the above, favorable reconsideration in the form of a notice of allowance is respectfully requested. Any questions regarding this communication can be directed to the undersigned attorney, James A. Larson, Reg. No. 40,443, at (612) 455-3805.

Respectfully submitted,



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Dated: December 16, 2005

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